

## Executor Personally Liable for Estate Taxes

The executor in this case tried many arguments to get out of being personally liable for the unpaid estate taxes, but Tax Court ruled he is liable. Here is a brief summary of this case, so you can properly advise your clients who are acting as the person in charge of a decedent's estate.

Mr. Kwang Lee died in 2001. Anthony J Frese acted as the executor of Mr. Lee's estate. Mr. Frese filed an Estate Tax Return, Form 706, approximately May 21, 2003. From July 2003 through February 2007, Mr. Frese distributed \$1,045,000 to beneficiaries. \$640,000 of this was distributed on February 28, 2007.

IRS selected Mr. Lee's Form 706 for examination and determined a deficiency of over \$1,000,000, plus penalties. On April 26, 2006, IRS mailed a notice of deficiency to Mr. Frese. Mr. Frese timely filed a petition for redetermination in Tax Court in July 2006. The Court entered a decision on March 24, 2010, finding a tax deficiency of \$536,151. IRS assessed the unpaid tax on July 19, 2010.

In early 2013 IRS sent a Notice of Federal Tax Lien Filing. The estate filed Form 12153, Request for a Collection Due Process or Equivalent Hearing (CDP). In the request, the estate checked the collection boxes for "Installment Agreement" and "Offer in Compromise". At the estate's request, IRS held off on holding the CDP until 2016.

In December 2016, the estate filed Form 433-A, showing that the estate's only asset was a checking account containing \$182,941. The estate also submitted an Offer in Compromise for this same amount, giving "doubt as to collectability" as the grounds for the offer.

IRS rejected the offer, stating the \$640,000 distributed in February 2007 should be included in the calculation of the amount able to be collected. Mr. Frese argued these funds should not be used in the calculation.

The estate tried to argue Mr. Frese did not have knowledge of the deficiency and also made this \$640,000 distribution based on the advice of the estate's tax adviser.

Tax Court denied both of these arguments. First, Mr. Frese is considered to have knowledge of the tax debt since he is the one who requested the CDP hearing in response to the Notice of Intent to Levy. Second, the argument regarding the advice of the tax adviser was based on a court case (*Little v Commissioner* from 1999) where the executor did not have a college degree, was unaware of the potential and pending Government claims against the estate, and relied on multiple erroneous reassurances from counsel that the estate had no Federal tax liabilities. In the immediate case, Mr. Frese knew about the pending Government claim, was a licensed attorney and a municipal court judge, and produced no evidence from a tax adviser regarding making the distribution.

Final decision of the Court – IRS's positions were correct and Mr. Frese was personally liable for the assessment, despite his attempts to argue otherwise.

If you would like to read more about Mr. Frese arguments, we suggest you read the case.

Estate of Kwang Lee, TC Memo 2021-92.

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